# POLICIES AND PROCEDURES APPLICABLE TO THE TREASURY DIVISION, DEPARTMENT OF REVENUE, STATE OF ALASKA

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#### **APPENDIX H**

### <u>Provisions of the Restatement (Third) of Trusts Regarding Delegation of Fiduciary Responsibilities</u>

§171. A trustee has a duty personally to perform the responsibilities of the trusteeship except as a prudent person might delegate those responsibilities to others. In deciding whether to delegate fiduciary authority in the administration of a trust, and thereafter in supervising assets, the trustee is under a duty to the beneficiaries to exercise fiduciary discretion and to act as a prudent person would act in similar circumstances.

Fiduciary liable for breach of duty. But a fiduciary of a state fund subject to the provisions of this statute is not liable for a breach of fiduciary duty where that duty has been prudently and properly delegated.

### Statute Pertaining to Authority to Delegate Fiduciary Responsibility

### Section 37.10.071. Investment powers and duties.

- (a) In making investments under this section, the fiduciary of a state fund shall
- (1) act as official custodian of cash and investments by securing adequate and safe custodial facilities for them;
- (2) receive all items of cash and investments;
- (3) collect and deposit the principal of and income from owned or acquired investments;
- (4) invest and reinvest the assets in accordance with this section;
- (5) receive and spend appropriations to cover the cost of the exercise of duties under this section;
- (6) exercise the powers of an owner with respect to the assets;
- (7) perform all acts, not prohibited by this section, whether or not expressly authorized, that the fiduciary considers necessary or proper in administering the assets;
- (8) maintain accounting records in accordance with generally accepted accounting principles;
- (9) engage an independent certified public accountant to conduct an annual audit of the financial condition and investment transactions;

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- (10) enter into and enforce contracts or agreements considered necessary, convenient, or desirable for the investment purposes of this section; and
- (11) when choosing to acquire or dispose of investments, secure competitive national or international market rates or prices, or the equivalence of those rates or prices in the judgment of the fiduciary.
- (b) Under this section, the fiduciary of a state fund or the fiduciary's designee may
- (1) delegate investment, custodial, or depository authority on a discretionary or nondiscretionary basis to officers or employees of the state or to independent firms, banks, financial institutions, or trust companies by designation through appointments, contracts, or letters of authority;
- (2) acquire or dispose of investments either directly, indirectly, or through investment pools or trusts, by competitive or negotiated agreements, contracts, or auctions, in public or private markets;
- (3) concentrate or diversify investments as the fiduciary considers appropriate to increase the probable total rate of return or to decrease the overall exposure to potentially adverse market value risks;
- (4) protect the market value or the rate of return of the investments by entering into forward agreements to buy or sell assets at a future date as a hedge against existing held assets or as a precommitment of future cash flows:
- (5) lend assets, under an agreement and for a fee, against deposited collateral of equivalent market value;
- (6) borrow assets on a short-term basis, under an agreement and for a fee, against the deposit of collateral consisting of other assets in order to accommodate temporary cash or investment needs;
- (7) hold investments in bearer or registered form in the name of the state, a fund, or nominees authorized by the fiduciary;
- (8) utilize consultants, advisors, custodians, investment services, and legal counsel for assistance in investment matters on either a continuing or a limited-term basis and with or without compensation;
- (9) declare records to be confidential and exempt from AS 40.25.110 and 40.25.120 if the records contain information that discloses the particulars of the business or the affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.
- (c) In exercising investment, custodial, or depository powers or duties under this section, the fiduciary of a state fund shall apply the prudent investor rule and exercise the fiduciary duty in the sole financial best interest of the fund entrusted to the fiduciary. Among beneficiaries of a fund, the fiduciaries shall treat beneficiaries with impartiality.
- (d) In exercising investment, custodial, or depository powers or duties under this section, the fiduciary or the fiduciary's designee is liable for a breach of a duty that is assigned or delegated under this section, or under AS 14.40.255, 14.40.280(c), 14.40.400(b), AS 37.10.070, AS 37.14.110 (c), 37.14.160, or 37.14.170. However, the fiduciary or the designee is not liable for a breach of a duty that has been delegated to another person if the delegation is prudent under the applicable standard of prudence set out in statute or if the duty is assigned by law to another person, except to the extent that the fiduciary or designee
- (1) knowingly participates in, or knowingly undertakes to conceal, an act or omission of another person knowing that the act or omission is a breach of that person's duties under this chapter;

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- (2) by failure to comply with this section in the administration of specific responsibilities, enables another person to commit a breach of duty; or
- (3) has knowledge of a breach of duty by another person, unless the fiduciary or designee makes reasonable efforts under the circumstances to remedy the breach.
- (e) The state shall defend and indemnify the fiduciary or an officer or employee of the state against liability under (d) of this section to the extent that the alleged act or omission was performed in good faith and was prudent under the applicable standard of prudence.
- (f) In this section, "fiduciary of a state fund" or "fiduciary" means
- (1) the commissioner of revenue for investments under AS 37.10.070;
- (2) with respect to the Alaska Retirement Management Board, for investments of the collective funds that it manages and administers,
- (A) each trustee who serves on the board of trustees; and
- (B) any other person who exercises control or authority with respect to management or disposition of assets for which the board is responsible or who gives investment advice to the board; or
- (3) the person or body provided by law to manage the investments for investments not subject to AS 37.10.070.